

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STACY COOPER,

Defendant-Appellant.

UNPUBLISHED

October 28, 2003

No. 240848

Wayne Circuit Court

LC No. 01-008415-01

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

MEMORANDUM.

Defendant appeals as of right from a nonjury conviction of possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv), for which he was sentenced to lifetime probation with the first six months in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that he did not knowingly and voluntarily waive his right to a jury trial. Because defendant did not raise this issue below, it is not preserved for appeal. Therefore, defendant must establish plain error affecting his substantial rights before relief may be granted. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant contends that he did not knowingly waive his right to a jury trial because the court did not explain the difference between a bench and jury trial, did not advise him of his right to participate in jury selection, and did not advise him that a jury verdict must be unanimous. Although the Seventh Circuit Court of Appeals has imposed such a duty on district courts as part of its supervisory authority, *United States v Delgado*, 635 F2d 889, 890 (CA 7, 1981),¹ and the Sixth Circuit Court of Appeals suggested that the district courts follow *Delgado*, *United States v Martin*, 704 F2d 267, 274-275 (CA 6, 1983), it is not a constitutional requirement, *United States v Sammons*, 918 F2d 592, 596-597 (CA 6, 1990), and is not required by state law. *People v*

¹ That part of *Delgado* which held that automatic reversal was required for failure to advise the defendant of his jury trial rights was abrogated in *United States v Rodriguez*, 888 F2d 519 (CA7, 1989). Reversal is only required if the error was not harmless under Federal Rule of Criminal Procedure 52(a). *Id.*, 528. See also *United States v Robinson*, 8 F3d 418, 422 (CA 7, 1993).

Leonard, 224 Mich App 569, 595-596; 569 NW2d 663 (1997); *People v James (After Remand)*, 192 Mich App 568, 570-571; 481 NW2d 715 (1992).

Defendant also contends that he did not voluntarily waive his right to a jury trial because the court did not determine whether the waiver was induced by promises of leniency. The court is not required to make such an inquiry, *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993); *People v Margo*, 141 Mich App 220, 223-224; 366 NW2d 254 (1985), especially where, as here, the defendant does not claim that his waiver was coerced. *People v Taylor*, 245 Mich App 293, 305 n 2; 628 NW2d 55 (2001).

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello